

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
SLADE GORTON & CO., INC.,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 05-11366-MLW
v.	)	
	)	
ANTONIO BARILLARI, S.A.	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF’S REQUEST FOR ENTRY OF DEFAULT**

Pursuant to Fed. R. Civ. P. 55(a), Plaintiff Slade Gorton & Co., Inc. (“Slade Gorton”) hereby requests an entry of default against Defendant Antonio Barillari, S.A. for failure to plead or otherwise defend itself in this action. As reasons therefore, the Plaintiff states as follows:

1. On June 28, 2005, Slade Gorton filed a Complaint seeking affirmative relief against defendant Antonio Barillari, S.A. (“Barillari”).
2. On September 1, 2005, pursuant to Fed. R. Civ. P. 4(h)(2), the Plaintiff served a copy of its summons and Complaint and Jury Demand on Barillari by delivering them through an international process server pursuant to the means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents. *See* Return of Service on Barillari, Sept. 1, 2005, attached hereto as Exhibit A (*see also* Docket Entry No. 10).
3. The time within which Barillari had to serve a responsive pleading or otherwise defend pursuant to Fed. R. Civ. P. 12(a) has expired and Barillari failed to serve or file an answer or otherwise defend against the Complaint. *See* Affidavit of Jeffrey S. King, Esq., attached hereto as Exhibit B.

4. Barillari is not an infant or an incompetent person. *Id.*

WHEREFORE, the Plaintiff hereby requests that, pursuant to Fed. R. Civ. P. 55(a), the Clerk of Court enter default against Barillari.

Respectfully submitted,

SLADE GORTON & CO.

By its attorneys,

Dated: March 16, 2007

/s/ Clarence H. Brown

Jeffrey S. King (BBO No. 559000)

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KIRKPATRICK & LOCKHART

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(617) 261-3100

### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent, via First Class mail, postage prepaid, to those non-registered participants on the 16<sup>th</sup> day of March, 2006.

/s/ Clarence H. Brown

Clarence H. Brown

# **Exhibit A**

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the District of Massachusetts

Slade Gorton & Co., Inc.,

Plaintiff

SUMMONS IN A CIVIL ACTION

V.

Antonio Barillari, S.A.,

Defendant

CASE NUMBER:

05-11366 MLW

TO: (Name and address of Defendant)

Antonio Barillari, S.A.  
Hipolito Yrigoyen 723  
C1086AAK  
Buenos Aires, Argentina

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

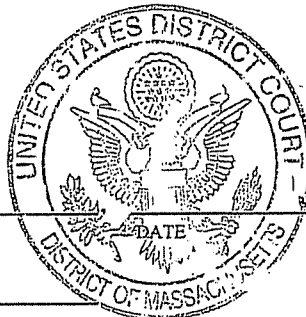
Jeffrey S. King, Esq.  
Kirkpatrick & Lockhart Nicholson Graham LLP  
75 State Street  
Boston, MA 02109

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

SARAH A. THORNTON

CLERK

(By) DEPUTY CLERK



JUN 28 2005

AO 440 (Rev 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER (PRINT) Please see attached.	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  Name of person with whom the summons and complaint were left: </div> <div> <input type="checkbox"/> Returned unexecuted: </div>		
<div style="display: flex; align-items: flex-start;"> <div style="width: 15%; text-align: right; padding-right: 10px;"> <input checked="" type="checkbox"/> Other (specify): </div> <div> Service was completed on September 1, 2005, in compliance with the Hague Convention on Service Abroad, and upheld through appeals in the Argentinean Courts. Please see Exhibit A, our International process server's translation of the official notice from the Argentinean Central Authority; and Exhibit B, a copy of the file for this matter received from the Argentinean Court. </div> </div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
<p style="text-align: center;">I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> Executed on _____  <div style="text-align: center; font-size: small;">Date</div> </div> <div style="width: 60%;"> _____  <div style="text-align: center; font-size: small;">Signature of Server</div> </div> </div> <div style="text-align: center; margin-top: 20px;"> _____  <div style="text-align: center; font-size: small;">Address of Server</div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

# **Exhibit B**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SLADE GORTON & CO., INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 05-11366-MLW
	)	
ANTONIO BARILLARI, S.A.	)	
	)	
Defendant.	)	
	)	

**AFFIDAVIT OF JEFFREY S. KING, ESQ. IN SUPPORT OF  
PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT**

I, Jeffrey S. King, Esq., hereby depose and state as follows:

1. I am an attorney duly licensed to practice law in the state and federal courts of this Commonwealth, and I am counsel of record for the plaintiff, Slade Gorton & Co., Inc. ("Slade Gorton"), in the above-captioned action.

2. I submit this affidavit in support of the Plaintiff's Request for Entry of Default. Unless otherwise indicated, I base this affidavit on my own personal knowledge of the issues in this action.

3. The Summons and a copy of the Plaintiff's Complaint and Jury Demand were served on the defendant, Antonio Barillari, S.A. ("Barillari"), on September 1, 2005, through an international process server pursuant to the means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.

4. Documents in connection with service upon Barillari in Argentina were returned to us through the international process procedures in January 2007. Those documents included

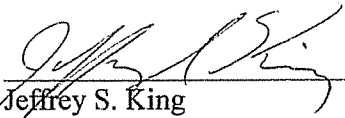
documents from the Argentinean courts. The documents were filed in this Court along with the Return of Summons on January 19, 2007 (*see* Docket Entry No. 10).

5. Based on a review of the Argentinean court documents, it appears Barillari challenged service in the Argentinean courts on the basis that a formal requirement related to the translation of the documents had not been satisfied. It also appears the Argentinean court denied Barillari's request. On June 9, 2006, Barillari filed an extraordinary appeal of that decision, which was also ultimately rejected.

6. The time within which Barillari had to serve a responsive pleading or otherwise defend pursuant to Fed. R. Civ. P. 12(a) has expired and Barillari failed to serve or file an answer or otherwise defend against the Complaint.

7. Barillari is not an infant or an incompetent person.

Signed under the pains and penalties of perjury this 16th day of March, 2007.

  
Jeffrey S. King